PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILIT WIPO
(Chapter II of the Patent Cooperation Treaty)

PCT

(PCT Article 36 and Rule 70)

STREA_010150 International application No. International filing date (day/month/year) 21 March 2004 (2.03.2004) 21 March 2004 (2.03.2004) 21 March 2003 (21.03.2003) 21 March 2003 (21.03.2003) 21 March 2004 (22.03.2004) 21 March 2003 (21.03.2003) 21 March 2003 (21.03.2003) 21 March 2003 (21.03.2003) 21 March 2003 (21.03.2003) 22 March 2003 (21.03.2003) 23 March 2003 (21.03.2003 (21.03.2003) 23 March	Applicant's or agent's file reference				
PCT/US04/08739 22 March 2004 (22.03.2004) 21 March 2003 (21.03.2003)	67762-010150	FOR FURTHER A	CTION	See Form PCT/IPEA/416	
PCTUSO-068739 22 March 2004 (22.03.2004) 21 March 2003 (21.03.2003)	International application No.	International filing date	(day/month/year)	Priority date (day/month/year)	
International Patent Classification (IPC) or national classification and IPC IPC(7): 641K 35/78 and US Cl.: 424/177 Applicant EZA RICORPORATED 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of sheets, including this cover sheet. 3. This report is also accompanied by ANNEXES, comprising: a (sent to the applicant and to the International Bureau) a total of sheets, as follows: sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). 4. This report contains indications relating to the following items: Box No. II Priority Box No. II Priority Box No. II Priority Box No. II Priority Box No. VI Leck of unity of invention Box No. VI Certain defects in the international application Box No. VII Certain defects in the international application Box No. VII Certain defects in the international application Box No. VIII Certain observations on the international application	PCT/US04/08739	22 March 2004 (22 02	2004)	• •	
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	rm PCT/IPEA/409 (cover sheet)(January 2004)				

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/US04/08739

Box N	o. I Basis of the report				
1. Wit	th regard to the language, this report is based on the international application in the language in which it was				
This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:					
	international search (under Rules 12.3 and 23.1(b))				
	publication of the international application (under Rule 12.4)				
	international preliminary examination (under Rules 55.2 and/or 55.3)				
2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):					
\boxtimes	the international application as originally filed/furnished				
\boxtimes	the description:				
	pages 1-78 as originally filed/furnished				
	pages* NONE received by this Authority on				
	pages* NONE received by this Authority on				
\boxtimes	the claims:				
	pages 79-83 as originally filed/furnished				
	pages* NONE as amended (together with any statement) under Article 10				
	received by this Authority on				
	pages* NONE received by this Authority on				
\boxtimes	the drawings:				
	pages 1-8 as originally filed/furnished				
	pages* NONE received by this Authority on				
	pages* NONE received by this Authority on				
	a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.				
3. 🔀	The amendments have resulted in the cancellation of:				
	the description, pages NONE				
	the claims, Nos_NONE				
	the drawings, sheets/figs NONE				
	the sequence listing (specify): NONE				
	any table(s) related to the sequence listing (specify):NONE				
4. 🔀	This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).				
	the description, pages NONE				
	the claims, Nos_NONE				
	the drawings, sheets/figs NONE				
	the sequence listing (specify): NONE				
	any table(s) related to the sequence listing (specify): NONE				
If item	4 applies, some or all of those sheets may be marked "superseded."				
rm PCT/	TPEA/409 (Box No. I) (January 2004)				

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/US04/08739

Box No. III Non-est	ablishment of opinion	with regard to novelty, inventive step and industrial applicability		
The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:				
the entire inter	national application			
claims Nos. 10	-20 and 30-40			
because:				
the said internation not require an	ational application, or the international preliminary	e said claim Nos relate to the following subject matter which does y examination (specify):		
52				
so unclear that	claims or drawings (inc	dicate particular elements below) or said claims Nos. 10-20 and 30-40 are could be formed (specify):		
		lent claims under PCT Rule 6.4(a).		
the claims, or opinion could b	said claims Nose formed.	are so inadequately supported by the description that no meaningful		
no international	search report has been	established for said claims Nos		
the nucleotide a	nd/or amino acid sequentive Instructions in that:	nce listing does not comply with the standard provided for in Annex C of		
the written form		has not been furnished		
		does not comply with the standard		
the computer rea	idable form	has not been furnished		
the tables related	to the nucleotide and/o	does not comply with the standard r amino acid sequence listing, if in computer readable form only, do not provided for in Annex Cable of the Administration Instruction		
comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions. See Supplemental Box for further details.				
orm PCT/IPEA/409 (Box No. III) (January 2004)				

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No. PCT/US04/08739

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-9 and 21-29	YES
	Claims NONE	NO NO
Inventive Step (IS)	Claims 4-9 and 24-29	YES
	Claims 1-3 and 21-23	NO
Industrial Applicability (IA)	Claims 1-9 and 21-29	YES
	Claims NONE	NO

2. Citations and Explanations (Rule 70.7)

Claims 1-3 and 21-23 lack an inventive step under PCT Article 33(3) as being obvious over BOBBIO et al. (Acta Alimentaria, 2002) in view of KITAGAWA et al. (J. Food Science, 1994).

BOBBIO et al. teach preparing a stable, freeze-dried extract of acai (*Euterpe oleracea*) fruit containing high levels of beneficial healthful anthocyanidins therein (see entire document). BOBBIO et al. does not expressly teach various claimed properties of such a freeze-dried product, nor using a different species of *Euterpe*, such as *Euterpe edulus*.

KITAGAWA et al. advantageously disclose that there is a potential market for dried puree of hearts of palm (also known as *Euterpe edulus* fruit) which could be added to instant soup mixtures (see, for example, page 844, second paragraph in second column).

It would have been obvious to one of ordinary skill in the art to prepare a stable freeze-dried product containing high amounts of healthful anthocyanidins from the fruit of *Euterpe oleracea* based upon the beneficial teachings provided by Bobbio. It would also have been obvious, based upon the beneficial teachings provided by Bobbio, to prepare such a stable, freeze-dried product from the fruit (hearts of palm) of *Euterpe edulus* for addition to instant soup mixtures (as advantageously disclosed by Kitagawa) so as to provide a stable, freeze-dried *Euterpe* fruit product which advantageous contains high levels of healthful anthocyanidins. Such freeze-dried fruit products would intrinsically contain fruit pulp therein. The adjustment in conventional working parameters (for example, determining an effective concentration of anthocyanidins therein, and/or other conventional claimed properties of such determining an appropriate water content thereof) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Claims 1-9 and 21-29 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

Claims 4-9 and 24-29 meet the criteria set out in PCT Article 33(2) and (3), because the prior art does not teach or fairly suggest the claimed invention.

Form PCT/IPEA/409 (Box No. V) (January 2004)